

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MYRON G. BRANDON,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS
OF WASHINGTON, *et al.*,

Defendants.

CASE NO. 3:22-CV-5284-LK-DWC

ORDER DECLINING TO
VOLUNTARILY RECUSE

Plaintiff Myron G. Brandon filed this action alleging violations of his due process rights and a DOC policy in connection with his transfer to a different intrastate prison. The District Court referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Presently before the Court is Plaintiff's Motion to Change to Another Judge Due to Prejudice, which the Court interprets as a motion to recuse pursuant to Local Civil Rule ("LCR") 3(f). Dkt. 32. After review of Plaintiff's Motion (Dkt. 32) and the relevant record, the undersigned declines to recuse himself and refers the Motion and this Order to Chief Judge Estudillo pursuant to LCR 3(f).

I. Discussion

Pursuant to LCR 3(f), whenever a motion to recuse is filed pursuant to 28 U.S.C. § 144 or 28 U.S.C. § 455, “the challenged judge will review the motion papers and decide whether to recuse voluntarily.”

A judge of the United States shall disqualify himself in any proceeding in which his impartiality “might reasonably be questioned.” 28 U.S.C. § 455(a). A federal judge also shall disqualify himself in circumstances where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. *Id.* at §455(b)(1). 28 U.S.C. § 144 states:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists.

28 U.S.C. § 144.

Under both 28 U.S.C. § 144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir. 1993). This is an objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis for recusal:

[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep seated favoritism or antagonism that would make fair judgment impossible. Thus,

1 judicial remarks during the course of a trial that are critical or disapproving of, or
2 even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias
or partiality challenge.

3 510 U.S. at 555.

4 Here, Plaintiff contends the undersigned should recuse himself on the basis of
5 unfavorable rulings the undersigned made against Plaintiff in a prior case. *See* Dkt. 32. Plaintiff's
6 claim of judicial bias arising from his disagreement with the manner in which the undersigned
7 adjudicated a prior case is insufficient to support recusal. *See States v. Sudley*, 783 F.2d 934, 939
8 (9th Cir. 1986) ("[A] judge's prior adverse ruling is not sufficient cause for recusal."); *accord*
9 *Liteky*, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias
10 or partiality motion."). The undersigned makes rulings in each case based upon the issues
11 presented by the parties or upon an independent review by the Court and has no personal bias or
12 reason to be partial to one side or the other in this matter. Plaintiff has not shown a reasonable
13 person could question this Court's impartiality. Accordingly, the undersigned will not recuse
14 himself voluntarily from this case.

15 II. Conclusion

16 Based on the foregoing reasons, this Court finds there is no reasonable basis for a
17 voluntary recusal in this matter. Therefore, the undersigned declines to recuse himself
18 voluntarily.

19 The Clerk is directed to refer Plaintiff's Motion (Dkt. 32) to Chief Judge Estudillo in
20 accordance with Local Civil Rule 3(f).

1 The Clerk is also directed to send a copy of this Order to Plaintiff, to the Honorable
2 David G. Estudillo, and to the Honorable Lauren King.

3 Dated this 12th day of October, 2022.

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6 David W. Christel
7 United States Magistrate Judge
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